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 CLERK US DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 DEPUTY

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11  
 12 SOUTHERN DISTRICT OF CALIFORNIA

13 EDWARD M. STEFAN,

14 Plaintiff,

15 v.

16 SUNSET LADDER CO., BENROSE  
 17 PROPERTIES LLC. and DOES 1  
 THROUGH 10.

18 Defendants.

) CASE NO.: **'08 CV 0296 DMS POR**  
 )  
 ) CIVIL COMPLAINT  
 )  
 ) **DISCRIMINATORY PRACTICES IN**  
 ) **PUBLIC ACCOMMODATIONS**  
 ) (ONE COUNT - VIOLATION OF  
 ) AMERICAN WITH DISABILITIES ACT)  
 ) (ONE COUNT - VIOLATION OF  
 ) CALIFORNIA CIVIL CODE)  
 ) [42 U.S.C. §§12182 (a) ET. SEQ;  
 ) CALIFORNIA CIVIL CODE §§ 51, 52, 54,  
 ) 54.1; CALIFORNIA HEALTH & SAFETY  
 ) CODE §19995]  
 )  
 ) **NEGLIGENCE PER SE**  
 ) [CALIFORNIA CIVIL CODE §§ 2338, 3333;  
 ) CALIFORNIA EVIDENCE CODE § 669(a)]  
 )  
 ) **DEMAND FOR JURY TRIAL**  
 ) [F.R.C.P. § 38 (b) ; Local Rule 38.1]

22 Plaintiff, EDWARD M. STEFAN (hereinafter referred to as "Plaintiff"), files his cause of  
 23 action against Defendants, SUNSET LADDER CO., BENROSE PROPERTIES LLC. and DOES 1  
 24 THROUGH 10, Inclusive, (hereinafter referred to as "Defendants") and alleges the following:

25 I.

26 **JURISDICTION AND VENUE**

27 1. This Court has original jurisdiction of this civil action pursuant to 28 USC §1331,  
 28 federal question jurisdiction, and the court's supplemental jurisdiction, 28 USC §1337. Jurisdiction is

<sup>1</sup> also based on the Americans with Disabilities Act (“ADA”), 42 USC §§12101 through 12111, 12181-  
<sup>2</sup> 12184 and 12201, et. seq.

2. Venue in this Court is proper pursuant to 28 USC §1391 (b) and (c).

4       3. Pursuant to 28 USC §1367 (a) Plaintiff shall assert all causes of action based on state  
5 law, as plead in this complaint, under the supplemental jurisdiction of the federal court. All the causes  
6 of action based on federal law and those based on state law, as herein stated, arose from a common  
7 nuclei of operative fact. That is, Plaintiff was denied equal access to Defendants' facilities, goods,  
8 and/or services in violation of both federal and state laws and/or was injured due to violations of  
9 federal and state access laws. The state actions of Plaintiff are so related to the federal actions that they  
10 form part of the same case or controversy. The actions would ordinarily be expected to be tried as one  
11 judicial proceeding.

II.

## **THE PARTIES**

14       4.     Defendant SUNSET LADDER CO. is, and at all times mentioned herein was, an  
15 individual, a business or corporation or franchise of form presently unknown, organized and existing  
16 and/or doing business under the laws of the State of California. Defendant SUNSET LADDER CO., is  
17 located at 7760 Vickers Street, San Diego, CA (hereinafter "the subject property"). Plaintiff is  
18 informed and believes and thereon alleges that Defendant SUNSET LADDER CO. is, and at all times  
19 mentioned herein was, the owner, lessor or lessee of the subject property and/or the owner and/or  
20 operator of the subject facility located at the subject property.

21       5.     Defendant BENROSE PROPERTIES LLC. is, and at all times mentioned herein was, an  
22 individual, a business or corporation or franchise of form presently unknown, organized and existing  
23 and/or doing business under the laws of the State of California. Plaintiff is informed and believes and  
24 thereon alleges that Defendant BENROSE PROPERTIES LLC. is, and at all times mentioned herein  
25 was, the owner, lessor or lessee of the subject property and/or the owner and/or operator of the public  
26 accommodation located at the subject property.

27       6. Defendants DOES 1 through 10 were at all times relevant herein subsidiaries, parent  
28 companies, employers, employees, agents corporate officers, managers principals and/or

representatives of the named Defendants. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will pray leave of the court to amend this complaint to allege the true names and capacities when ascertained. The named Defendants and DOES 1 through 10 are hereinafter collectively referred to as "Defendants."

7. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them herein were, at all times relevant to the action, the owners, franchisees, lessees, general partners, limited partners, agents, employees, employers, representing partners, subsidiaries, parent companies, joint ventures and/or divisions of the remaining Defendants and were acting within the course and scope of that relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified, and/or authorized the acts alleged herein of each of the remaining Defendants.

8. Plaintiff is an otherwise qualified individual with a disability as provided in the Americans with Disabilities Act of 1990, 42 USC §12102, Part 5.5 of the California Health & Safety Code, the Unruh Civil Rights Act, California Civil Code, §§51, et. seq., §§52, et. seq., the California Disabled Persons Act, California Civil Code §§54, et. seq. and §55 and other statutory measures which refer to the protection of the rights of “physically disabled persons.” and is a resident of the County of San Diego, State of California.

III.

## FACTS

9. Plaintiff has a mobility impairment. Moreover, Plaintiff has had a history of or has been classified as having a physical impairment, as required by 42 USC §12102 (2) (A).

23       10. Defendants' facilities are public accommodations within the meaning of the Americans  
24 with Disabilities Act, California Civil Code §§51 et. seq. (Unruh Civil Rights Act), California Civil  
25 Code §§54 et. seq. (Disabled Persons Act), and California Health and Safety Code §§19955 et. seq..  
26 Plaintiff is informed and believes and thereon alleges that Defendants have newly built or altered the  
27 subject property and/or the subject facility since 1971 within the meaning of California Health and  
28 Safety Code §19959.

1       11. On or about November 5, 2007, Plaintiff personally visited the public accommodation  
2 owned and operated by Defendants for the purpose of inquiring about and/or availing himself of the  
3 goods, services, facilities, privileges, advantages or accommodations operated and/or owned by  
4 Defendants.

5       12. Plaintiff was denied full and equal access to the facilities owned and/or operated by the  
6 Defendants because the property was inaccessible to members of the disabled community. Said denial  
7 of full and equal access occurred because of barriers which Plaintiff personally experienced which  
8 included, but are not limited to, lack of legally compliant disabled parking spaces, access aisle, signage  
9 or path of travel.

10      13. Plaintiff is informed and believes there are additional barriers to full and equal access,  
11 but because of the lack of legally compliant disabled parking spaces and other barriers identified in the  
12 preceding paragraph, which deterred Plaintiff from visiting or patronizing the facilities, it would have  
13 been a futile gesture to attempt further access to the facilities. Plaintiff is informed and believes and  
14 thereon alleges the facilities were in violation of the requirements of Title 24 of California's Building  
15 Code requirements, DOJ regulations and the ADAAG, and the spirit and intent of California Vehicle  
16 Code sections 22511.8, 22511.10 and 22511.11 in at least one or more of the following respects:  
17 inaccessible entrance, door hardware or incorrect door entry width clearance and/or opening force  
18 and/or missing kick plates; inaccessible service counters; non-compliant bathrooms; handrails, if  
19 required, do not exist or comply with requirements; inadequate or incorrect landing areas; inadequate  
20 or incorrect ramp and slope for access and incorrect threshhold at door and/or mats or unsafe carpeting;  
21 and other barriers which Plaintiff was not able to specifically observe because of the denial of access.

22      14. Plaintiff was also denied full and equal access because of discriminatory policies and  
23 practices regarding accommodating people with disabilities.

24      15. Plaintiff is informed and believes and thereon alleges that the subject facility has been  
25 newly constructed and/or underwent remodeling, repairs, or alterations since 1971, and that defendant  
26 has failed to comply with California and Federal access standards which applied at the time of each  
27 such new construction and/or alteration.

28      ///

1       16. Defendants failed to remove architectural barriers as required by law which precluded  
2 Plaintiff from having full and equal access to Defendants' property.

3       17. As a result of Defendants' failure to remove architectural barriers, Plaintiff suffered  
4 injuries, as same are contemplated under the statutory measures which refer to the protection of the  
5 rights of "physically disabled persons.", for which Plaintiff is entitled to damages. Plaintiff does not  
6 allege a distinct physical injury as same is generally understood.

7       18. The wrongful conduct of Defendants, unless and until enjoined by order of this Court,  
8 will cause great and irreparable injury to Plaintiff in that Defendants' failure to provide full and equal  
9 access to individuals with disabilities, including Plaintiff, denies Plaintiff access to and use of the  
10 subject facility in violation of the ADA Accessibility Guidelines and/or California's Title 24 Building  
11 requirements, and/or other applicable Codes statutes and/or regulations.

12       19. Plaintiff alleges that Defendants will continue to operate a public accommodation which  
13 is inaccessible to him and to other individuals with disabilities.

14       20. Pursuant to 42 USC §12188(a), and 28 C.F.R. §36.304, Defendants are required to  
15 remove architectural barriers to their existing facilities.

16       21. Plaintiff has no adequate remedy at law for the injuries currently being suffered in that  
17 money damages will not adequately compensate him for the amount of harm suffered as a result of  
18 exclusion from participation in the economic and social life of this state.

19       22. Plaintiff believes that architectural barriers precluding him full and equal access to the  
20 public accommodation will continue to exist at his future visits, which will result in future  
21 discrimination of Plaintiff, in violation of the Americans with Disabilities Act. Plaintiff is currently  
22 being subjected to discrimination because Plaintiff cannot return to or make use of the facilities, goods  
23 and/or services offered by Defendants to the general public.

24       23. Plaintiff would return to the subject property for the purpose of inquiring about and/or  
25 availing himself of the goods, services, facilities, privileges, advantages or accommodations operated  
26 and/or owned by Defendants if the barriers were removed and there was full and equal access to  
27 individuals with disabilities.

28       ///

1       24. Plaintiff seeks damages for each and every day that he was denied access to the subject  
2 property or was deterred from attempting to attend the subject place of public accommodation because  
3 of continuing barriers to full and equal access.

IV

**FIRST CLAIM FOR**  
**VIOLATION OF AMERICAN WITH DISABILITIES ACT**  
**42 USC §12101, et. seq.**

**(Against All Defendants)**

8       25. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
9 paragraphs 1 through 24, inclusive, as though set forth fully hereat.

10       26. Plaintiff was denied full and equal access to Defendants' goods, services, facilities,  
11 privileges, advantages, or accommodations within a public accommodation owned, leased and/or  
12 operated by Defendants, in violation of 42 USC §12182.(a). Plaintiff was therefore subjected to  
13 discrimination and is entitled to injunctive relief pursuant to 42 USC §12188 as a result of the actions  
14 or inaction of Defendants.

15       27. Based on the facts plead hereinabove and elsewhere in this complaint, Defendants did,  
16 and continue to, discriminate against Plaintiff and persons similarly situated by denying disabled  
17 persons full and equal access to Defendants' goods, services, facilities, privileges, advantages or  
18 accommodations within a public accommodation, in violation of Americans with Disability Act

19       28. Plaintiff intends to visit the Defendants' facility again in the immediate future. Plaintiff  
20 believes that architectural barriers precluding him from full and equal access of the public  
21 accommodation will continue to exist at his future visits, which will result in the future discrimination  
22 of Plaintiff, in violation of the Americans with Disabilities Act.

23        29. Plaintiff will suffer irreparable harm unless Defendants are ordered to remove  
24 architectural barriers to Defendants' public accommodation, and/or to modify their policies and  
25 practices regarding accommodating of people with disabilities. Plaintiff has no adequate remedy at law  
26 to redress the discriminatory conduct of Defendants.

27       30. Plaintiff seeks injunctive relief to redress his injuries as provided in the federal statutory  
28 authority referenced hereinabove, requiring compliance with federal access laws for all access

1 violations which exist at the property, requiring removal of architectural barriers and other relief the  
2 court may deem proper.

3       31. Plaintiff seeks reasonable attorney fees and Plaintiff also seeks any other order that will  
4 redress the discrimination to which he has been subjected, is being subjected to and/or will be  
5 subjected.

V.

**SECOND CLAIM FOR**  
**VIOLATION OF CALIFORNIA CIVIL CODE**

**(Against All Defendants)**

10       32. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
11 paragraphs 1 through 31, inclusive, as though set forth fully hereat.

12       33. Based on the facts plead hereinabove and elsewhere in this complaint, Defendants did,  
13 and continue to, discriminate against Plaintiff and persons similarly situated by denying disabled  
14 persons, Defendants' goods, services, facilities, privileges, advantages or accommodations within a  
15 public accommodation, in violation of California Civil Code §§ 51, et. seq., §§52, et. seq. and §§54, et.  
16 seq..

17       34. Defendants' actions were and are a violation of Plaintiff's rights under the Americans  
18 with Disabilities Act and the Disabled Persons Act, California Civil Code §§54. et. seq.. Plaintiff is  
19 entitled to three times his actual damages with a minimum of \$1,000.00 under California Civil Code  
20 §54.3 for each offense. The amount of damages suffered by Plaintiff is not yet determined . When the  
21 amount is ascertained, he will ask the Court for leave to amend this complaint to reflect this amount.  
22 Plaintiff is also entitled to attorney fees and costs.

35. The actions of Defendants were and are a violation of Plaintiff's rights under the  
Americans with Disabilities Act and in violation of the Unruh Civil Rights Act, California Civil Code  
§§51 et. seq.. Plaintiff is entitled to three times his actual damages with a minimum of \$4,000.00  
under California Civil Code §52 for each offense. The amount of damages suffered by Plaintiff is not  
yet determined. When the amount is ascertained, he will ask the Court for leave to amend this  
complaint to reflect this amount. Plaintiff is also entitled to attorney fees and costs.

1 VI.  
2  
3**THIRD CLAIM FOR NEGLIGENCE PER SE****(Against All Defendants)**

4 36. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
5 paragraphs 1 through 35, inclusive, as though set forth fully hereat.

6 37. At all times relevant hereto, there was in effect the Americans with Disabilities Act,  
7 California Civil Code §§51 et. seq. (Unruh Civil Rights Act), California Civil Code §§54 et. seq.  
8 (Disabled Persons Act) and California Health and Safety Code §§19955 et. seq., all of which require  
9 that public accommodations and facilities provide services to people with disabilities that are equal to,  
10 and are not inferior to, the services provided to patrons who are not physically disabled.

11 38. Defendants owed Plaintiff a mandatory statutory duty to make their facility accessible  
12 pursuant to, among other statutes and guidelines, ADA Accessibility Guidelines and Title 24 of the  
13 California Administrative Code and applicable Uniform Building Codes, as amended.

14 39. Plaintiff believes and thereon alleges that Defendants have failed to make their facilities  
15 accessible before and after remodeling, as required by California Government Code §4450 and  
16 California Health and Safety Code §19955.

17 40. Defendants owed Plaintiff a mandatory statutory duty to provide him full and equal  
18 access to accommodations, advantages, facilities, privileges and services of all business establishments.  
19 Plaintiff is a member of the class which these statutes are designed to protect. The aforementioned acts  
20 and omissions of Defendants constitute a denial of equal access to the use and enjoyment of the  
21 Defendants' facilities by people with disabilities.

22 41. Defendants' acts or omissions alleged herein are a violation of statutory requirements  
23 including, but not limited to, the Americans with Disabilities Act, California Civil Code §§51 et. seq.  
24 (Unruh Civil Rights Act), California Civil Code §§54 et. seq. (Disabled Persons Act) and California  
25 Health and Safety Code §§19955 et. seq., and public policy, and therefore constitutes negligence per se.

26 42. As a proximate result of the action or inaction of Defendants and each of them, Plaintiff  
27 suffered the harm these statutes are designed to prevent, to wit, exclusion from and/or from unequal  
28 access to goods, services and facilities provided by Defendants to the general public and deprivation of

1 his civil rights. Plaintiff suffered injuries, as same are contemplated under the statutory measures  
2 which refer to the protection of the rights of "physically disabled persons.", for which Plaintiff is  
3 entitled to damages, but not a distinct physical injury as same is generally understood.

4 43. Plaintiff seeks special and general damages and statutory damages according to proof, as  
5 described more fully hereinabove.

6 **VII.**

7 **JURY DEMAND**

8 44. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a  
9 jury trial.

10 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them, as  
11 follows:

- 12 1. An order enjoining Defendants from violating the disabled access laws of the United  
13 States and directing Defendants to remove all architectural barriers at Defendants'  
14 public accommodations;
- 15 2. An order awarding Plaintiff three times the amount of actual, special and/or statutory  
16 damages for violation of his civil rights and for restitution, but no less than \$1,000, for  
17 each day upon which the above-described barriers existed pursuant to the applicable  
18 California Civil Code Sections including, but not limited to §§52 and 54.3 for each and  
19 every offense of California Civil Code §§51 and 54;
- 20 3. An order awarding Plaintiff three times the amount of actual, special and/or statutory  
21 damages for violation of his civil rights and for restitution, but no less than \$4,000, for  
22 each and every offense of California Civil Code §51, pursuant to the Unruh Civil Rights  
23 Act and Disabled Persons Act;
- 24 4. An award of special and general damages and statutory damages for negligence per se  
25 according to proof;

26     ///

27     ///

28     ///

5. An order awarding Plaintiff reasonable attorney fees and costs;
  6. Such other and further relief as the Court deems proper.

Dated: 2/10/08

Respectfully submitted,

Duane H. Scepser, Esq.  
Attorney for Plaintiff



**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 147667 - BH**

**February 14, 2008  
15:25:50**

**Civ Fil Non-Pris**  
USAO #: 08CV0296 CIVIL FILING  
Judge.: DANA M SABRAW  
Amount.: \$350.00 CK  
Check#: BC# 3036

**Total-> \$350.00**

**FROM: STEFAN V. SUNSET LADDER CO.  
CIVIL FILING**